

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Ohio Power Siting            )  
Board’s Review of Ohio Adm. Code            )    Case No. 21-902-GE-BRO  
Chapter 4906-1, 4609-2, 4906-3, 4906-4        )  
4906-5, 4906-6 and 4906-7.                    )

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**APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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The Ohio Power Siting Board’s (OPSB) Finding and Order fails consumers and is unreasonable and unlawful.<sup>1</sup> OCC recommended that the OPSB modify its rules to mandate that its review of supplemental transmission projects include consideration of need and cost effectiveness of such projects.<sup>2</sup> OCC also recommended the OPSB modify its rules to require utilities to demonstrate that they utilize competitive solicitation for all transmission utility supplemental projects as a means of containing costs being charged to consumers.<sup>3</sup>

However, the OPSB did not address OCC’s arguments in its Finding and Order, in violation of R.C. 4903.09 and binding Ohio Supreme Court precedent.<sup>4</sup> Because the OPSB did not respond to OCC’s arguments, the Finding and Order is unreasonable and unlawful.

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<sup>1</sup> Finding and Order (July 20, 2023).

<sup>2</sup> OCC Consumer Protection Comments (August 5, 2022) at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *In re Comm. Rev. of the Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶ 51.

Accordingly, under R.C. 4903.10 and R.C. 4906.12 (which makes applicable to the OPSB certain statutes applicable to the PUCO), OCC applies for rehearing of the Finding and Order, which was unlawful in the following respects:

**ASSIGNMENT OF ERROR NO. 1: The OPSB erred by rendering a decision that ignored arguments OCC raised in initial and reply comments.**

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I.     INTRODUCTION**

The OPSB Finding and Order in this case fails consumers. The OPSB ignored OCC’s objections altogether. The OPSB failed to address OCC’s recommendation that the OPSB should modify its rules to mandate that its review of supplemental transmission projects include consideration of the need and cost effectiveness of the projects.<sup>5</sup> The OPSB also ignored OCC’s recommendation that utilities must demonstrate that they utilize competitive solicitation for all transmission utility supplemental projects to contain costs being charged to consumers.<sup>6</sup>

The Order thus violates R.C. 4903.09 (as applicable through R.C. 4906.12) as applied in binding Ohio Supreme Court precedent.<sup>7</sup> Because the OPSB did not respond to OCC’s arguments, the Finding and Order is unreasonable and unlawful.

Unfortunately for Ohio consumers, there is little to no regulatory oversight of utility costs, necessity, or prudence of supplemental transmission project investment costs

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<sup>5</sup> OCC Consumer Protection Comments (August 5, 2022) at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *In re Comm. Rev. of the Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶ 51.

at the state or federal level. As a result, electric transmission costs have recently increased at a staggering rate for consumers. For example, Duke Energy Ohio, Inc. recently proposed to collect more than \$88 million from residential consumers through its Base Transmission Rate Rider (“BTR”).<sup>8</sup> To protect consumers from too-high transmission costs, the OPSB should grant OCC’s Application for Rehearing as further explained below.

## II. MATTER FOR CONSIDERATION

### **ASSIGNMENT OF ERROR NO. 1: The OPSB erred by rendering a decision that ignored arguments OCC raised in initial and reply comments.**

The OPSB ignored OCC’s recommendations. Consequently, the Finding and Order is unlawful.

Applying R.C. 4903.09, the Supreme Court of Ohio has found unlawful PUCO decisions in which the PUCO failed to address a party’s arguments. In *In re Fuel Adjustment Clauses for Columbus S. Power Co. and Ohio Power Co.*, the Court found: “AEP is correct that the commission failed to address its arguments in any substantive manner. Accordingly, we remand the cause to correct this error.”<sup>9</sup> This decision was based on the Court’s finding that, under R.C. 4903.09, the PUCO “must explain its decisions” and cannot make “summary rulings.”<sup>10</sup> R.C. 4906.12 applies this same requirement to OPSB proceedings.

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<sup>8</sup> Case No. 23-457-EL-RDR, Application (July 14, 2023) at Schedule B-2, p.1.

<sup>9</sup> *In re Comm. Rev. of the Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶ 51; *see also In re Suvon, L.L.C.*, 166 Ohio St. 3d 519, 524-28 (2021).

<sup>10</sup> *Id.*

The OPSB Finding and Order violates R.C. 4903.09 as applied in binding Supreme Court precedent. OCC recommended the OPSB modify its rules in two ways. First, for consumer protection OCC recommended that the OPSB modify its rules to mandate its review of supplemental transmission projects include consideration of the need and cost effectiveness of the projects.<sup>11</sup> OCC also recommended for consumer protection that the OPSB modify its rules to require utilities to demonstrate that they utilize competitive solicitation for all transmission utility supplemental projects as a means of containing costs being charged to consumers.<sup>12</sup> OCC raised both arguments in both initial and reply comments.<sup>13</sup>

R.C. 4903.09 and binding Supreme Court of Ohio precedent requires the OPSB to address OCC's arguments. The OPSB did not address OCC's arguments. Instead, the OPSB ignored OCC's positions – and thereby ignored this important consumer protection issue. The OPSB's Finding and Order is unreasonable and unlawful. Rehearing should be granted.

### **III. CONCLUSION**

To protect consumers against unreasonable transmission costs, the OPSB should grant rehearing and reject or modify the Finding and Order in this case. The OPSB should accept OCC's consumer recommendation that review of supplemental transmission projects should include consideration of the need and cost effectiveness of the projects.

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<sup>11</sup> OCC Consumer Protection Comments (August 5, 2022) ("OCC Comments") at 2, OCC Reply Comments (September 2, 2022) at 1-2.

<sup>12</sup> *Id.*

<sup>13</sup> OCC Comments at 2.

The OPSB should also require competitive solicitation of all transmission utility supplemental projects, for the protection of Ohio consumers.

Respectfully submitted,

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Ohio Consumers' Counsel

*/s/ William J. Michael*  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 21st day of August 2023.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J..